

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

May 04, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JAY J. JOHN,

Plaintiff,

v.

QUALITY LOAN SERVICE CORP. OF  
WASHINGTON; DEUTSCHE BANK  
NATIONAL TRUST COMPANY; and  
NATIONSTAR MORTGAGE LLC, d/b/a  
MR. COOPER;

Defendants.

NO. 4:20-CV-05008-SAB

**ORDER DENYING  
PLAINTIFF'S MOTION FOR  
REMAND**

Before the Court is Plaintiff's Motion for Remand, ECF No. 6. The motion was considered without oral argument. Plaintiff requests that the Court should remand his case back to Benton County Superior Court because the Court lacks jurisdiction over his claims and because the case was improperly removed. Defendants oppose the motion. Having considered the motion, the briefing, and the relevant caselaw, the Court **denies** Plaintiff's Motion for Remand.

**Facts and Procedural History**

On June 30, 2006, Plaintiff purchased a property located at 4301 West 35th Court, Kennewick, Washington 99337-2749 and received a Statutory Warranty Deed. ECF No. 1-2 at ¶¶ 3.1-3.2. Plaintiff had two mortgages against the property

1 through Defendants. *Id.* at ¶ 3.3. Although it is not entirely clear from the  
2 Complaint, the Court assumes Plaintiff stopped making payments on his mortgages  
3 and his property is in foreclosure proceedings.

4 On August 28, 2019, Plaintiff filed a pro se Complaint to Quiet Title in  
5 Benton County Superior Court.<sup>1</sup> In his original complaint, Plaintiff alleges that  
6 Defendants engaged “in a pattern of fraud...as relates to the failure to negotiate in  
7 good faith with elderly borrowers such as Plaintiff.” *Id.* at ¶ 3.5. In particular,  
8 Plaintiff alleged that Defendants used deceptive means to induce Plaintiff to over-  
9 leverage his home; use falsely inflated valuations; provided misleading statements  
10 regarding the balance of his mortgage, arrears, escrow balances, and reinstatement  
11 quotes; used the Mortgage Electronic Registration System to conceal the name of  
12 the true owner of the loan in violation of Washington law; forced a default by  
13 instructing Plaintiff to become 90 days past due in order to receive relief from his  
14 mortgage payment and then denying Plaintiff a loan modification; and failing to  
15 engage in the mediation process in a manner consistent with the facts,  
16 circumstances and needs of Plaintiff and with consideration of the actual value of  
17 the property at issue, and the likelihood of recovering comparable sums after  
18 foreclosure. *Id.* at ¶¶ 3.5(a)-(f).

19 Plaintiff brought claims under the FDCPA, the Washington Consumer  
20 Protection Act, the Real Estate Settlement Procedures Act, the RICO Act, the  
21 Washington Unfair or Deceptive Trade Practices Act, the Foreclosure Fairness  
22 Act, and the Washington Deed of Trust Act. Plaintiff requests that the Court  
23 confirm title to the Property in favor of Plaintiff and quiet Defendants’ claims to  
24 the Property. *Id.* at ¶ 5.1.

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25 <sup>1</sup> Plaintiff alleges that he purchased a form complaint from a company called  
26 Rockingham, PMA. He alleges that Rockingham was engaged in the unauthorized  
27 practice of law in preparing his deficient complaint, though the Court is unable to  
28 discern what import this is to Plaintiff’s argument in favor of remand. ECF No. 6 at  
2-3, ECF No. 7 at 2-5.



1 as plaintiffs are the masters of their complaints, voluntary dismissal of federal law  
2 claims gives the district court discretion to remand any remaining pendent state  
3 law claims. *See Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 353-54  
4 (1988); *Baddie v. Berkeley Farms, Inc.*, 64 F.3d 487, 490 (9th Cir. 1995).

5 If the basis of removal is diversity jurisdiction, the removing defendants bear  
6 the burden of establishing that the requirements of diversity jurisdiction are  
7 satisfied. *Strotek Corp v. Air Transp. Ass’n of Am.*, 300 F.3d 1129, 1131 (9th Cir.  
8 2002). Whether parties are diverse from each other “is determined (and must exist)  
9 as of the time the complaint is filed and removal is effected.” *Id.* at 1131. For  
10 purposes of diversity jurisdiction, “complete diversity” means only that “the  
11 citizenship of each plaintiff is diverse from the citizen of each defendant”; it is not  
12 necessary to show that defendants are diverse from each other. *Caterpillar Inc. v.*  
13 *Lewis*, 519 U.S. 61, 68 (1996).

14 A corporation is a citizen of every state in which it is incorporated and the  
15 one state in which it has its principal place of business. 28 U.S.C. § 1332(c)(1);  
16 *Hertz Corp. v. Friend*, 559 U.S. 77, 80-81 (2010). A limited liability company “is a  
17 citizen of every state of which its owner/members are citizens.” *Johnson v.*  
18 *Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). A national  
19 banking association is a citizen only “of the State in which its main office, as set  
20 forth in its articles of association, is located.” *Wachovia Bank, N.A. v. Schmidt*, 546  
21 U.S. 303, 307 (2006); *Rouse v. Wachovia Mortg., FBS*, 747 F.3d 707, 715 (9th Cir.  
22 2014). A trust has the citizenship of its trustee or trustees. *Demarest v. HSBC Bank*  
23 *U.S.A., N.A.*, 920 F.3d 1223, 1227-28 (9th Cir. 2019) (holding that HSBC, the  
24 trustee, was sued in its own name and therefore its citizenship was all that mattered  
25 for purposes of diversity).

26 Federal courts disregard formal or nominal parties’ citizenship when  
27 considering citizenship for subject matter jurisdiction purposes. *Renfro v. Quality*  
28 *Loan Serv. Corp. of Wash.*, No. 2:17-CV-00194-SMJ, 2017 WL 3317299 at \*1

(E.D. Wash. Aug. 3, 2017). Courts have defined a nominal defendant as one who “holds the subject matter of the litigation in a subordinate or possessory capacity and to which there is no dispute.” *S.E.C. v. Colello*, 139 F.3d 674, 676 (9th Cir. 1998). Most courts consider trustees in foreclosure suits as nominal parties unless the plaintiff has alleged direct and substantive claims against them. *Navarro Sav. Ass’n v. Lee*, 446 U.S. 458, 464 (1980); *Demarest*, 920 F.3d at 1229; *Adrain v. Wells Fargo Bank, N.A.*, No. 2:16-CV-00142-SAB, 2016 WL 4059231 at \*1 (E.D. Wash. July 27, 2016).

If there is any doubt as to the right of removal, the district court should remand the action to state court. *Gaus*, 980 F.2d at 566. A party may also move to remand a case back to state court if the district court lacks subject matter jurisdiction. 28 U.S.C. § 1447.

### Discussion

Plaintiff makes several arguments in favor of remanding his case to state court. First, Plaintiff argues that remand is proper because the Court no longer has federal question jurisdiction over his case. ECF No. 6 at 9-10. Second, Plaintiff accuses Defendant Deutsche Bank and Nationstar’s attorneys of professional misconduct by filing the instant Notice of Removal because they have not proven an “actual attorney-client relationship” between Defendants and the attorneys. *Id.* at 11-12. Third, Plaintiff argues that the Notice of Removal has not adequately alleged facts to prove diversity jurisdiction existed because the Defendants are not totally diverse from each other. *Id.* at 14. Finally, Plaintiff argues that the Court should remand his case under the *Colorado River* abstention doctrine. In support of all of these arguments, Plaintiff cites to a declaration from his counsel, which has 98 paragraphs, over 1,500 pages of exhibits, and a myriad of assertions that are by and large inadmissible under the Federal Rules of Evidence. In response, Defendant argues that Plaintiff’s arguments are meritless and that the Court continues to have federal jurisdiction over the case. In reply, Plaintiff doubles

1 down on his standing arguments, asserts that “Deutsche Bank” does not actually  
2 exist, and requests that the Court order an evidentiary hearing to inquire into  
3 defense counsel’s authority to represent Defendants. ECF No. 6 at 11.

4 The Court considers each of Plaintiff’s arguments in turn, beginning with his  
5 standing argument. Having considered the briefing and the relevant case law, and  
6 for the reasons discussed herein, the Court **denies** Plaintiff’s Motion to Remand.

7 1. Defendants Have Standing to Remove

8 Plaintiff argues that Deutsche Bank and Nationstar lacked standing to file  
9 the Notice of Removal. As far as the Court can discern, Plaintiff argues that  
10 “Deutsche Bank” and “Deutsche Bank National Trust Company” are not the same  
11 thing, and that “Deutsche Bank” does not exist. It further appears that Plaintiff  
12 argues that there are three entities that make up “Deutsche Bank”: Plaintiff seems  
13 to argue that there are three entities Defendant purports are one: (1) Deutsche Bank  
14 National Trust Company; (2) Deutsche Bank National Trust Company, as Trustee  
15 on behalf of HIS Asset Securitization Corporation Trust 2006-HE2; and (3)  
16 Deutsche Bank. *See* ECF No. 6 at 10-11. Plaintiff argues that, because “Deutsche  
17 Bank” is not a named party, it has no standing to remove. ECF No. 6 at 10-11. In  
18 support of this argument, Plaintiff just cites to a nearly 1,600-page declaration  
19 without any pin cites.

20 Plaintiff’s standing argument is borderline incomprehensible and completely  
21 without merit. As demonstrated in the notices of sale and as reference in the Notice  
22 of Removal, all three entities pointed to by Plaintiff are the same entity. ECF No.  
23 5-2 at 37, 40. Furthermore, Defendants’ Corporate Disclosure Statement details the  
24 relationship between the three entities Plaintiff wrongly purports are separate. *See*  
25 ECF No. 3 at ¶ 1 (“Deutsche Bank National Trust is a wholly owned subsidiary  
26 of Deutsche Bank Holdings, Inc., which is a wholly owned subsidiary of Deutsche  
27 Bank Trust Corporation, which is a wholly owned subsidiary of DB USA  
28 Corporation, which is a wholly owned subsidiary of Deutsche Bank AG, a public

1 held banking corporation organized under the laws of the Federal Republic of  
2 Germany.”). Thus, Plaintiff’s argument that Deutsche Bank is not a named party  
3 and therefore has no standing has no merit.

4 Plaintiff’s argument that Defendants have no standing to remove because its  
5 attorneys do not actually have an attorney-client relationship with them is also  
6 meritless. There is simply no evidence that there is no attorney-client relationship  
7 between Defendants and its attorneys. Local Civil Rule 83.2 requires only that a  
8 party file a formal notice of appearance. An attorney is not required to prove she  
9 has an attorney-client relationship with any given client before filing motions on  
10 the client’s behalf. LCivR83.2(d). The cases Plaintiff cites to in support of his  
11 request for an evidentiary hearing are not applicable here, as they deal with issues  
12 such as whether an attorney has third-party standing to bring claims on behalf of  
13 anonymous clients. Other courts faced with this same argument from Plaintiff’s  
14 counsel have soundly rejected it. *See Robertson v. GMAC Mortg. LLC*, C12-  
15 02017-MJP, 2013 WL 12175089 at \*2 (W.D. Wash. Feb. 19, 2013) (“In essence,  
16 Plaintiff seeks to pierce the attorney-client relationship and disclose  
17 communications between Defendants and their counsel. This motion is wholly  
18 without merit, unnecessary, and is frivolous.”); *Bank of New York Mellon v. Stafne*,  
19 C16-00077, 2016 WL 873664 at \*3 (W.D. Wash. Aug. 9, 2016). Defendants’  
20 counsel made formal appearances before the Court and are admitted to practice in  
21 this Court. The Court is convinced by defense counsel’s representations and will  
22 not require more of Defendants or remand based on Plaintiff’s groundless  
23 arguments.

## 24 2. The Court has Federal Jurisdiction Over This Case

25 Although there was federal question jurisdiction on the face of the  
26 Complaint at the time of removal, Plaintiff has since dismissed all of his federal  
27 law claims. *See* ECF No. 13. The only claims that remain are state law claims.  
28 Because Plaintiff is the master of his Complaint, the Court lacks subject matter

1 jurisdiction on the basis of federal question jurisdiction. *Carnegie-Mellon Univ.*,  
2 484 U.S. at 353-54; *Baddie*, 64 F.3d at 490.

3 The Court next considers whether it has diversity jurisdiction over Plaintiff's  
4 case. Parties do not dispute the amount of controversy and agree that this element  
5 is satisfied. Instead, Plaintiff argues that complete diversity is lacking because the  
6 Notice of Removal does not discuss the citizenship of Defendant QLS.<sup>2</sup> Although  
7 QLS is a named defendant, its citizenship is irrelevant to the determination of  
8 diversity here. QLS is a nominal defendant, as demonstrated by the Stipulation of  
9 Nonparticipation filed in Benton County Superior Court prior to removal. ECF No.  
10 5-1 at 9-10. Courts have found such a stipulation sufficient to demonstrate that a  
11 party is a nominal party. *Adrain*, 2016 WL 40592231 at \*1; *Renfro*, 2017 WL  
12 3317299 at \*2-3. Furthermore, no substantive allegations are brought against QLS,  
13 nor are any monetary damages sought from it. Whether Plaintiff named QLS as a  
14 nominal party is irrelevant to determining whether QLS is in fact a nominal party.  
15 *Renfro*, 2017 WL 3317299 at \*2. Accordingly, QLS's citizenship is irrelevant to  
16 the determination of complete diversity.

17 To determine whether complete diversity exists, the Court need only  
18 consider the citizenship of Plaintiff, Deutsche Bank National Trust Company, and  
19 Nationstar. Plaintiff is a citizen of Washington. ECF No. 1-2 at ¶¶ 1.1, 3.2.  
20 Deutsche Bank, as a national bank, is a citizen of California because its articles of  
21 association establishes its main office in Los Angeles. *See* ECF No. 3. Nationstar is  
22 an LLC, so its citizenship is determined by the citizenship of its members.

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24 <sup>2</sup> Plaintiff also argues that the Notice of Removal fails to discuss the citizenship of  
25 the Mortgage Electronic Registration Service (MERS). However, MERS is not a  
26 party to this suit and its citizenship is entirely irrelevant to the Court's analysis. 28  
27 U.S.C. § 1332(a) (diversity jurisdiction determined based on citizenship of *parties*  
28 *to the civil action*); *see also Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 84 (2005)  
("It is not incumbent on the named defendants to negate the existence of a potential  
defendant whose presence in the action would destroy diversity.").

1 Nationstar has two members, Nationstar Sub 1 LLC and Nationstar Sub 2 LLC,  
2 both of which are wholly owned by Nationstar Mortgage Holdings, Inc., which is  
3 incorporated in Delaware and has its principal place of business in Texas.

4 Therefore, Nationstar is a citizen of Delaware and Texas.<sup>3</sup>

5 Plaintiff is diverse from all Defendants who are actual parties in interest.  
6 Complete diversity is therefore satisfied. As discussed above, Plaintiff does not  
7 dispute Defendants' conclusion that the amount in controversy exceeds \$75,000.  
8 The Court therefore finds it has diversity jurisdiction over this case and that  
9 remand is not warranted.

10 3. Remand is Not Warranted under the *Colorado River* Doctrine

11 Finally, Plaintiff argues that the Court should remand his case under the  
12 *Colorado River* abstention doctrine. Plaintiff argues that Defendants failed to  
13 include pleadings in their Notice of Removal that would have made the Court  
14 "aware of the abstention issues which this state court case clearly raises regarding  
15 the interaction between Ch. 65.12 RCW and Ch 61.24 RCW and the alleged  
16 unconstitutionality of Ch. 61.24 RCW." ECF No. 6 at 18. Plaintiff argues that  
17 these state law issues require the Court to abstain and remand his case. *Id.*

18 Under *Colorado River Water Conservation District v. United States*, district  
19 courts have discretion to decline to exercise jurisdiction over a case for damages  
20 based on the following factors: (1) whether a state court and federal court assume  
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22 <sup>3</sup> Plaintiff also appears to argue that complete diversity is lacking because some of  
23 the Defendants may share Delaware citizenship. Although that does not appear to  
24 be the case here—as all of the actual parties in this case actually are completely  
25 diverse from one another—it would be irrelevant if more than one Defendant was  
26 in fact a citizen of Delaware. "Complete diversity" does not require that each  
27 defendant be diverse from every other defendant. Rather, absent evidence of  
28 fraudulent joinder (of which there is no evidence here), "complete diversity"  
requires only that the plaintiff be diverse from each defendant. *Roche*, 546 U.S. at  
84; *Caterpillar Inc.*, 519 U.S. at 68; *Morris v. Princess Cruises, Inc.*, 236 F.3d  
1061, 1067 (9th Cir. 2001).

1 jurisdiction over the same res; (2) the relative inconvenience of the federal forum;  
2 (3) the need to avoid piecemeal litigation; and (4) the order in which the parallel  
3 state and federal proceedings were filed. 424 U.S. 800, 818-19 (1976). This  
4 discretion should be exercised only in “exceptional” cases and “only the clearest of  
5 justifications support dismissal” of the parallel federal action. *See Moses H. Cone*  
6 *Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 19 (1983). The mere  
7 duplicativeness of state and federal proceedings is not sufficient to justify  
8 abstention. *Id.*

9 Despite Plaintiff’s argument to the contrary, Defendants did provide the  
10 Court with all of the state court records, including any pleadings that go into the  
11 merits of Plaintiff’s state law claims. *See* ECF No. 5. Without reaching the merits  
12 of Plaintiff’s state law claims, the *Colorado River* doctrine does not apply here  
13 because there is no parallel state court proceeding addressing the state law issues  
14 raised here. *Smith v. Cent. Ariz. Water Conserv. Dist.*, 418 F.3d 1028, 1032 (9th  
15 Cir. 2005) (district court may dismiss or stay under *Colorado River* if the parallel  
16 state court proceeding will be an adequate vehicle for the complete and prompt  
17 resolution of the issues between the parties). Plaintiff has also not identified why  
18 this case is an exceptional case in which *Colorado River* should apply. The fact  
19 that there are issues of state law and that the Court would be applying state law is  
20 not sufficient to demonstrate that abstention and remand are warranted. Finally,  
21 *Colorado River* does not provide grounds for remand. *Keystone Fruit Mktg., Inc. v.*  
22 *Nat. Fire Ins. Co. of Hartford*, No. 2:10-CV-5145-RMP, 2011 WL 3293390 at \*3  
23 (E.D. Wash. Aug. 1, 2011) (“However, when an entire case is removed to federal  
24 court, there is no parallel state action that remain in state court. Accordingly,  
25 *Colorado River* does not supply a basis for abstention...).

26 There is no basis for the Court to abstain from exercising its jurisdiction  
27 under *Colorado River*. Accordingly, the Court denies Plaintiff’s Motion for  
28 Remand.

1     4. Plaintiff's Counsel Must Comply with Rule 11

2         As a closing note, the Court reminds Plaintiff's counsel of his obligations  
3 under Federal Rule of Civil Procedure 11. As discussed above, Plaintiff's claims in  
4 support of remand were—by and large—wholly without support in law or fact. The  
5 Court also notes that it is not the first to be concerned with the lack of legal or  
6 factual support for claims brought by Plaintiff's counsel, Mr. Stafne. *See*  
7 *Robertson*, C12-2017-MJP, 2013 WL 12175089 at \*2; *Bank of New York Mellon*,  
8 C16-00077-TSZ, 2016 WL 8738664 at \*3.

9         Mr. Stafne is reminded of his obligation to ensure his client's claims and  
10 arguments are supported by existing law, that factual contentions have evidentiary  
11 support, and are not presented for an improper purpose. Fed. R. Civ. P. 11(b). Mr.  
12 Stafne is notified that, pursuant to Rule 11(c), future filings containing frivolous  
13 legal arguments or factual contentions without evidentiary support, like the claims  
14 asserted here, may lead to sanctions that may include payment of a penalty as well  
15 as reasonable attorney's fees and other expenses.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Remand, ECF No. 6, is **DENIED**.

3 2. As it appears that none was filed prior to removal, Defendants are directed  
4 to file an Answer or Rule 12 motion to Plaintiff's Complaint no later than **June 1,**  
5 **2020**. The Court will set a telephonic scheduling conference after receiving  
6 Defendants' Answer or Rule 12 motion, if necessary.

7 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter  
8 this Order and to provide copies to counsel.

9 **DATED** this 4th day of May 2020.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive style and is positioned to the right of the court seal.

15 Stanley A. Bastian  
16 United States District Judge  
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